IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos. 1708, 1709, 1711, 1712, 1713, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1727, 1728, 1729, 1775, 1791, 1806, 1807, 1815, 1816, 1949 and 1950 of 1998.
(in all 25 matters)

For Approval and Signature:

Hon'ble MR.JUSTICE M.S. SHAH Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

DATTAJI CHIRANDAS

Versus

STATE OF GUJARAT

Appearance:

M/S P.M RAVAL, M.R BAROT, K.G. VAKHARIA, H.M MEHTA AND MR S.I. NANAVATI WITH MR TUSHAR MEHTA AND MR Y.S. LAKHANI for Petitioners

MR S.N. SHELAT, ADDL. ADVOCATE GENERAL WITH MR P.G. DESAI, GOVT. PLEADER for THE STATE OF GUJARAT.

MR K.N. RAVAL WITH MR R.J. OZA AND MR. Y.N. OZA with Mr V.H. Desai for the newly added respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of Judgment: 07/04/98

COMMON CAV JUDGMENT :

These petitions under Articles 226 of the Constitution challenge the orders passed by the State Government replacing the Chairmen of about 12 statutory Boards and Corporations and 13 Government Companies/Societies. All these petitions were taken up for final disposal with the consent of the learned counsel for the parties.

.RS 2

#. The facts giving rise to these petitions would be stated in detail later on, but broadly stated, it is the case of the petitioners in most of these petitions that the term of their office as Chairman was fixed for two/three years as the case may be. Reference is also made to the relevant statutory provisions under which the concerned Boards/Corporations have been established providing for the term of office and reference is also made to the orders of appointment stipulating the term of two/three years, as the case may be. In case of Chairmen of Government Companies, the matters are governed by the Memorandum and Articles of Association of the respective companies which do not provide for fixed tenure, but reliance is placed on the orders of appointment appointing the petitioners for a fixed period of three years. There are a few cases being Special Civil Applications No. 1722.98, 1724/98 and 1727/98 where no tenure was fixed in the order of appointment. All the petitions being disposed of by this judgment are broadly class

GROUP A - Petitions where the offices involved are statutory offices where the relevant statute has provided for term of office and such term is also provided for eithe in the initial appointment order or subsequent orde issued by the Government :

Sr. No.	SCA No.	Name of the Corporation	Act	Term as per Act/Rules
1.	1708/98	Gujarat Induatrial Development Corpn.	Gujarat Industrial Development Act,	2 Years

1962.

2.	1709/98	Gujarat State Ware-housing Corporation AAAAAAAAAAAAAAAAAAA	Warehousing Corpo-ration Act, 1962.	As may be prescribed
3.	1815/98	Ahmedabad Urban Development Authority	Gujarat Town Planning & Urban Development Act, 1976 & Gujarat Town Planning & Urban Development (Term of office & Condition of Service of the	3 Years

e-

Urban Development

Authority) Rules,

1977.

4.	1816/98	Surat Urban Deve-lopment Authority	-do-	-do-
5.	1775/98	Rajkot Urban Development Authority	-do-	-do-
6.	1714/98	Gujarat State Financial Corp. 1951	State Financial Corporations Act,	2 Years
7.	1716/98	Gujarat Backward Class Development Corporation.	Gujarat Backward Class Dev.Corpn. Act.	--
8.	1718/98	Gujarat Municipal	Gujarat Municipal	Not exce-

Finance Board Finance Board Act, eding 5

1979 years.

9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the

9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	Khadi & Gramodyog	Bombay Khadi &	As the
9.	1719/98	xed		
9.	1719/98		Board	Village Ind

stries Govt. may
Act, 1960. direct.

10.	1807/98	Gujarat Slum Clearance Board	Gujarat Slum Area (Improvement, Clearance and Re-Development Act, 1973.	3 Years

---

GROUP B - Petitions challenging removal of the respective petitioners from the office of the Chairman of Governmen

Companies where the Articles of Association of th

concerned companies or the Memorandum of Constitution o

the Government Societies registered under the Societie

Registration Act, 1860 do not provide for any fir
ny fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir
any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fi
any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any f
r any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any
ir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any
fir any fir any fir any fir any fir any fir any fir any fir any fir any fir an
fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir a
y fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir
ny fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir
any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any fi
any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any f
r any fir any fir any fir any fir any fir any fir any fir any fir any fir any fir any
ir any fir any fir any fir any fir any fir any fir any fir any fir any fi

for

appointment and removal but in the orders of thei

appointment the Government has specified a fixed term o

three years from the date of intial appointment, thoug

the term was not specified in the first order o

appointment.

Sr. No.	SCA No.	Name of the Corporation	Rules
1.	1712/98	Gujarat Sheep & Wool Development Corpn.Ltd.	Memorandum & Articles of Association of the Company
2.	1717/98	Gujarat State Leather Industry Development Corporation Ltd.	-do-
3.	172	Development Corpn. Ltd.	
4.	1723/98	Gujarat State Civil Supplies Corporation	-do-
5.	1729/98	Gujarat Tractor Corpn. Ltd.	-do-
6.	1791/98	Gujarat State Police Housing Finance Corpn.Ltd.	-do-
7.	1950/98	Gujarat State Rural Industries Marketing Corporation Ltd.	-do-
8.	1721/98	Gujarat Gopalak Vikas Board	Constitution of Society registered under the Societies Registration Act, 1860.
9.	1711/98	Gujarat University Granth Nirman Board	-do-
10.	1728/98	Gujarat State	Registered under Societies G

jarat State Registered under Societies Gujarat State Registered under Societies Gujarat State Registered under Societi s Gujarat State Registered under Societies Gujarat State Registered under Societies Gujarat State Registered under Soc eties Gujarat State Registered under Societies Gujarat State Registered under Societies Gujarat State Registered under Societies Gujarat State Registered under Societies Gujarat State Registered under Societies Gujarat State Registered u der Societies Gujarat State Registered under Societies Gujarat St te Registered under Societies Gujarat State Register

d under Societies Gujarat State Registered under Societies Gujara State Registered under Societies Gujarat State Registered under Societi--

ty Board Act & Bombay Public Trust Act.

11.	1806/98	Gujarat Matikam & Kalakari Board	--
12.	1949/98	Gujarat Thakore Samaj Vikas Board	--

GROUP - C - This group consists of petitions where there is no order appointing concerned petitioners for any fixed period.

Sr. No.	SCA No.	Name of the Corporation	Act
1.	1722/98	Gujarat Schedule Caste Dev. Corpn.	Gujarat SC Dev. Corpn. Act, 1985
2.	1724/98	Gandhidham Development Authority	Gandhidham (Dev. & control on erection of Buldgs.) Act, 1957
3.	1727/98	Gujarat State Petroleum Corpn. Ltd.	Memorandum & Articles of Assocn. of the Company.

#. The following petitions were argued as representative petitions :-

Group A Special Civil Application No. 1708 of 1998 is filed by Shri Dattaji Chirandas who has been replaced as Director and Chairman on the Board of Directors of the Gujarat Industrial Development Corporation (GIDC) established under the Gujarat Industrial Development Corporation Act, 1962. Dattaji Chirandas

was initially appointed as Chairman of the GIDC as per notification dated 3.5.1997 wherein his appointment as Chairman was until further orders, but subsequently by Resolution dated 14.8.1997, the petitioner's tenure was fixed for two years with effect from the date of appointment i.e. from 3.5.1997 and, therefore, it is contended that the petitioner is entitled to hold the office of Chairman of the GIDC till 2.5.1999. But by the impugned notification dated 6.3.1998, the petitioner has been replaced by Mr C.K. Koshi.

(ii) Special Civil Application No. 1815 of 1998 is filed by Shri Natvarbhai Ramdas Patel who has been replaced from the office of Chairman of the Ahmedabad Urban Development Authority established under the Gujarat Town Planning Act.

(iii) Special Civil Application No. 1709 of 1998 is filed by Shri Harshad Brahmbhatt who has been replaced from the office of Chairman of the Gujarat Warehousing Corporation.

Group B Special Civil Application No. 1791 of 1998 is filed by Shri Jayvantsinh S. Gohil who has been replaced from the office of Member and Chairman of the Gujarat State Police Housing Corporation which is a Government Company registered under the Companies Act, 1956.

Group C Special Civil Application No. 1724 of 1998 is filed by Dr Rajendra Shah who has been replaced from the office of Chairman, Gandhidham Development Authority established under the Gandhinagar (Development and Control of Erection of Buildings) Act, 1957.

#. In the aforesaid petitions in the group, the petitioners have averred that inspite of the fact that the petitioners are holding the respective offices for a fixed term, even before expiry of the term they are sought to be removed pursuant to the announcement made by

Shri Keshubhai Patel, after being sworn in as the Chief Minister of Gujarat on 4.3.1998, that the appointments made by the previous Government shall be cancelled and new appointments shall be made by the present Government. It is submitted that the respondents have no authority in law to remove the petitioners before expiry of the term stipulated in the order of appointment and also fixed in the concerned statute under which the concerned Board/Corporation is established. It is further submitted that even if the respondents have any such power, the respondents have no power to remove the petitioners from the respective offices without following the due procedure prescribed by law. By an amendment in Special Civil Application No. 1708 and in Special Civil Application No. 1791 of 1998, the petitioners have also averred that on the date when the impguned orders were passed on March 6/7, 1998, there was no Council of Ministers in existence nor had the Governor made any allocation of business under Rule 5 of the Government of Gujarat Rules of Business, 1990.

#. The State of Gujarat has appeared on caveat and affidavits are filed in reply to each petition, pointing out that the previous Government had appointed the petitioners as Chairmen/Vice-President of the various Boards, Corporations and Government Companies by way of nomination on political considerations. Their appointments were made for implementation of the policy of the then Government and that the same practice is to be continued and, therefore, for effective implementation of the policies of the present Government, the Chairmen and Directors appointed by the previous Government have to be replaced in public interest. It is further averred that with the swearing in of the Chief Minister, the Council of Ministers came in existence and relying on the past practice, it is averred that the other Ministers are appointed after a few days. It is further averred that in all cases the impguned orders were implemented on the date of issuance of the notifications or on the next day.

#. At the hearing of these petitions, Mr P.M. Raval, Mr. M.R. Barot, Mr. K.G. Vakharia, Mr. H.M. Mehta and Mr. S.I. Nanavati with Mr Tushar Mehta and Mr Y.S. Lakhani have raised the following contentions :-

I (i) When the impugned orders were passed on March 6-7, 1998, there was no Council of Ministers to aid and advise the Governor as contemplated by Article 163 (1) of the Constitution and, therefore, the impugned orders issued in the name

of the Governor were not legal and valid. The Chief Minister alone having been sworn in on March 4, 1998, the Governor could not have passed the impugned orders without the aid and advice of the Council of Ministers, which was formed only on March 13, 1998. Hence, the impugned orders passed in the interregnum have no existence in the eye of law.

(ii) Relying on the provisions of Rule 5 of the Gujarat Government Rules of Business, 1990 providing that the Governor shall, on the advice of the Chief Minister, allocate amongst the Ministers and Ministers of State the business of the Government by assigning one or more departments to the charge of a Minister or a Minister of State, tt is submitted that since the Governor had not made such allocation of business to the Chief Minister and other Ministers when the impugned orders were passed on March 6-7, 1998, the Chief Minister had no authority to give any aid and advice to the Governor for passing the impugned orders.

II The respondents have not passed any order removing the petitioners from the respective offices held by them. Without first removing the petitioners, the respondents could not have appointed other persons as Chairmen of the various Boards/Corporations/Government Companies and, therefore, also the impugned orders appointing new Chairmen in place of the petitioners are illegal and invalid.

III (i) The petitioners were appointed as Chairmen/Vice-President of the respective Boards/Corporations/Government Companies for a tenure of two or three years, as the case may be and, therefore, the respondents had no power or authority to remove the petitioners from the offices in question before expiry of the period stipulated in the order of appointment.

(ii) In any view of the matter, in case of statutory Boards/Corporations where the statute under which the concerned body is established, a specific period is stipulated for incumbent of the office and the Government has appointed the concerned petitioners as Chairman of that body for a period of two/three years. Hence, it is not open to the respondents to terminate the appointment of the

petitioners before expiry of the period stipulated in the statute as well as in the appointment order.

#. On the other hand, Mr S.N. Shelat, learned Additional Advocate General with Mr P.G. Desai, Government Pleader, Mr K.N. Raval and Mr. Y.N. Oza have made the following submissions :-

I The Council of Ministers was formed the moment Shri Keshubhai Patel was sworn in as the Chief Minister on March 4, 1998. There is no constitutional requirement that the Council of Ministers must have more than one minister. So long as the Governor has not appointed other Ministers at the advice of the Chief Minister, the Chief Minister can give aid and advice to the Governor. It is only when other Ministers are appointed by the Governor at the advice of the Chief Minister that the question of allocation of portfolios would arise and that it is only at that stage that Rule 5 of the Gujarat Government Rules of Business, 1990 would come into operation, but prior thereto the Chief Minister is the sole repository of the power.

II The petitioners were dignitaries appointed to high public offices and it is a consistent practice and convention that when they are to be replaced by other persons, the incumbent of the office is not removed from the office, but another person is appointed in place of the previous incumbent. Even when the petitioners were appointed as Chairmen of the respective Corporations/Boards/Government Companies, their initial appointment orders were on the aforesaid lines. Their predecessors in office were also not ordered to be removed from the respective offices, but the petitioners were appointed in place of the previous incumbents.

III The power of the Government to appoint Chairmen/Directors of the statutory Boards/Corporations/Government Companies includes the power to remove the incumbents. All the petitioners were appointed in the respective offices on purely political considerations for smooth implementation of the policies and programmes of the previous Government. Accordingly, the present Government has the power

to replace the incumbents of the respective offices by other persons so as to ensure smooth implementation of the policies and programmes of the present Government.

CONTENTION I

#. The learned counsel for the petitioners have vehemently urged that in view of the provisions of Part VI Chapter II of the Constitution, particularly the provisions of Articles 163 (1), 164, 166(3) and 167(c) of the Constitution, the Governor cannot exercise his powers under Article 154 of the Constitution without the aid and advice of the Council of Ministers. The relevant Articles read as under :-

"163. Council of Minister to aid and advise Governor.- (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) & (3) xxx xxx xxx xxxxxxx

164. Other provisions as to Ministers. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

Provided that ... .

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) to (5) xxx xxx xxx xxxxxxx

166. Conduct of business of the Government of a State.- (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) xxx xxx xxx xxx xxxxxxx

(3) The Government shall make rules for the more convenient transaction of the business of the Government of the State, and for the

allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

167. Duties of Chief Minister as respects the furnishing of information to Governor, etc.- It shall be the duty of the Chief Minister of each State -

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

It is submitted that the Chief Minister is at the most the head of the Council of Ministers, but the Chief Minister by himself is not the Council of Ministers as there must be atleast two Ministers in the Council of Ministers. The Chief Minister is certainly to head the Council of Ministers, but the Chief Minister is not a substitute for the Council of Ministers. In this connection reliance is also placed on the decisions of the Apex Court in AIR 1970 SC 1102, AIR 1971 SC 1002, AIR 1964 SC 72 and on the decision of the Madras High Court in AIR 1985 Madras 187.

#. Mr PM Raval has further developed his argument on the basis of Rule 5 of the Gujarat Government Rules of Business, 1990 which reads as under :-

"5(1) The Governor shall, on the advice of the Chief Minister, allocate amongst the Ministers and Ministers of State the business of the Government by assigning one or more departments to the charge of a Minister or a Minister of State :

Provided that nothing in this rule shall be deemed to prevent -

(i) the assigning of one department to the charge of more than one Minister or more than one Minister of State :

(ii) the assigning of any department or of business appertaining to a department to a Minister as well as to a Minister of State :

(iii) the Chief Minister from assigning temporarily to the charge of a Minister, a Minister of State or a Deputy Minister the Department, or as the case may be, any business, appertaining to a Department when the Minister-in-charge thereof is incapable of acting due to unavoidable absence or any other reason for some temporary period."

It is strenuously urged that in view of the aforesaid constitutional rules framed under Article 166 (3) of the Constitution, in absence of any allocation of portfolios by the Governor, the Chief Minister had no power or jurisdiction to give any aid or advice to the Governor on March 6-7, 1998 when the impugned orders were passed since the Council of Minister was formed on March 13, 1998 and the allocation of business amongst the Ministers was done by the Governor thereafter.

##. It is vehemently submitted by the learned counsel for the petitioners that there cannot be any Council of Ministers when only the Chief Minister is sworn in without any other Ministers. The very concept of collective responsibility of the Council of Minister is the heart of the parliamentary form of democracy. Whenever a no confidence motion is moved, it is against the Council of Ministers and not against the individual Chief Minister or Prime Minister. Similarly, when the Government sends any matter back for reconsideration under Article 167(c), it is for reconsideration of the Council of Ministers and there can be no such reconsideration if the Council of Ministers is not in existence and only the Chief Minister is sworn in without any other Ministers.

##. On the other hand, Mr Shelat, learned Additional Advocate General has submitted that the Constitution does not prescribe any maximum or minimum number of Ministers for formation of the Council of Ministers. Reliance is placed on "The Practice and Procedure of Parliament" by M.N. Kaul and S.L. Shakdher, Fourth Edition, 1991 Page 121, wherein it is observed :-

"The Council of Ministers consists of all the categories of Ministers of the Government of India whether they are `Member of Cabinet' or `Ministers of State' or `Deputy Ministers'. The Constitution does not lay down the number of Ministers - either the minimum or the maximum that should comprise the Council of Ministers.

> The size of the Council of Ministers is left to the Prime Minister who determines it according to the requirements from time to time."

The learned Additional Advocate General has also sought to buttress the above submission by relying on the affidavit dated march 19, 1998 of Mr G.J. Patel, Under Secretary, State of Gujarat pointing out the practice and convention which has developed that the Chief Minister is sworn in first and thereafter other Ministers are appointed, and the following instances are cited :-

Name of the Chief Minister	Date of appointment as Chief Minister	Date of appointment of other Ministers
1. Shri Babubhai Jashbhai Patel	18th June 1975	19th June 1975
2. Shri Amarsinh Bhilabhai Chaudhari	7th July 1985	7th July 1985
3. Shri Madhavinh Fulsinh Solanki	10th December 1989	13th December 1989
4. Shri Keshubhai Savdasbhai Patel	14th March 1995	19th March 1995
5. Shri Sureshchandra Rupshankar Mehta	21st October 1995	4th November 1995

The Government notifications are also produced alongwith the said affidavit in support of the aforesaid stand and it is submitted that it is erroneous to suggest that till other Ministers are sworn in, the Governor cannot exercise the powers vested in him. It is, therefore, contended that the Governor can act on the aid and advice of the Chief Minister as the sole member of the Council of Ministers.

##. Having given anxious and thoughtful consideration to the rival submissions on the aforesaid contention, this Court is of the view that the moment the Chief Minister is sworn in, there comes into existence a Council of Ministers wherein more Ministers can be appointed subsequently, but till then the Chief Minister acting as the Council of Ministers is not deprived of his power and duty of aiding and advising the Governor under Article

163 (1) of the Constitution.

Unless there is President's Rule, there is always a Council of Ministers in a State. The Constitution does not prescribe any maximum or minimum number of Ministers and, therefore, in principle there is nothing in the Constitution to prevent the leader of the majoirty party or coalition commanding the confidence of the majority of the members of the Legislative Assembly carrying on the business of aiding and advising the Governor all by himself. The formation of the Council of Ministers is complete with the swearing in of the Chief Minister. The contention on behalf of the petitioners that the provisions of Article 167 (c) of the Constitution requiring that it shall be duty of the Chief Minister, if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council obviously contemplates a situation, which is generally prevalent but not required by the Constitution as a matter of law, that the Council of Ministers has more than one Minister. If the Chief Minister constituting the Council of Ministers all by himself can aid and advise the Governor as discussed above, it necessarilly follows that in case the Governor requires any matter for reconsideration, the matter will have to be reconsidered by the Chief Minister acting as the Council of Ministers. When the Chief Minister takes oath of office, there is always the theoretical possibility and the general practice that subsequently more Ministers will be added to the Council of Ministers, but that does not mean that the Council of Ministers does not come into existence with the swearing in of the Chief Minister. Indeed, the Council of Ministers is known by the name of the Chief Minister as the Council of Ministers of Shri Keshubhai Patel. It will not, therefore, be out of place to refer at this stage to the comments made by leading political scientists and authors on the Constitutional Law to the position of the Prime Minister in the Parliamentary Form of Government in general and to the position of the Prime Minister in the United Kingdom in particular.

##. Jennings I. has said in his "Cabinet Government"
"It is from the time of Walpole we have the convention that the Prime Minister selects his own ministers. The ministers, no doubt, are appointed by the King, but in actual practice they are the nominees of the Prime Minister. The King simply receives and endorses the list prepared and presented to him by the Premier. If the Prime Minister has the power to make his ministers, it is

also his constitutional right to unmake them. The identity of the ministers is not known without the Prime Minister"

"The Prime Minister", said John Morley, "is the keystone of the Cabinet arch." It would, however, be more accurate, says Jennings, "to describe the Prime Minister as the keystone of the Constitution." The phrase is as precise as it is picturesque, for, as Jennings again says, "All roads in the Constitution lead to the Prime Minister. From the Prime Minister lead the roads to the Queen, Parliament, the Ministries, the other members of the Commonwealth, even the Church of English and the Courts of law."

Lord Morley described the Prime Minister as primus inter pares first among the equals but Sir William Vernor Harcourt described the Prime Minister as inter stellas luna minores - a moon among lesser stars. Jennings I. states that the Prime Minister is not merely the first among equals, he is not merely a moon among lesser stars..... "He is rather a sun around which planets revolve" (Jennings Ivor in " the Cabinet Government").

Sir Winston Churchil expressed the distinction between the Prime Minister and his Senior colleagues in the following graphic words in "Their Finest Hour" :-

"In any sphere of action there can be no comparison between the position of number one and number two, three or four. The duties and problems of all persons other than the number one are quite different and in many ways more difficult. It is always a misfortune when number two or three has to initiate a dominant plan or policy. He has to consider nor only the merits of the policy, but the mind of his chief; not only what to advise, but what is proper for him in his station to advise; not only what to do, but how to get it agreed, and how to get it done. Moreover, number two or three will have to reckon with numbers four, five and six, or may be some bright outsider, number twenty.....

At the top there are great simplifications. An accepted leader has only to be sure of what it is best to do, or at least to have made up him mind about it. The loyalties which centre upon number one are enormous. If he

> trips, he must be sustained. if he makes mistakes, they must be covered. If he sleeps, he must not be wantonly disturbed....."

Among his colleagues the Prime Minister has never been the first amongst equals at any time since Gladstone became Prime Minister in 1868. If he is described first among equals even now, it is simply to stress the democratic nature of his position. The Prime Minister is really a sun around which planets revolve and in the blaze of the sun the planets even lose their identity. The actual power of the Prime Minister, however, varies according to his personality and the extent to which he is supported by his party. "But within the limits of prudence and commonsence", as Byrum Carter observes, "he may exercise a directing authority which is the envy of political leaders of other states."

The above discussion about the position of the Prime Minister would necessarily apply to the Chief Minister of a State under our Constitution as well because it is the Chief Minister who selects the ministers and it is under advice of the Chief Minister that the Ministers are appointed. Although the Ministers hold office during the pleasure of the Governor, the acknowledged democratic convention clearly requires that on the advice of the Chief Minister, the Governor has to dismiss the Ministers. It is at the advice of the Chief Minister that the Governor allocates the business to different Ministers. Hence, until the other Ministers are appointed at the advice of the Chief Minister and the portfolios are allocated at the advice of the Chief Minister, necessarily all the portfolios are under the Chief Minister. In a given case, and such cases are not unusual, the Chief Minister and a few more Ministers may take oath of office, but no business is allocated to the Ministers for a few days. Till then, it is the Chief Minister who will handle the business of all the departments and the Governor will be acting on the aid and advice of the Council of Ministers where only the Chief Minister has the power to take decisions in respect of all the departments.

##. The learned counsel for the petitioners have, however, urged that the basic premise of the Parliamentary form of Government is collective responsibility of the Council of Ministers and not the individual responsibility of the Chief Minister to the Legislative Assembly of the State. That may be so, but

that is only begging the question because there is no minimum number of Ministers for a Council of Ministers to be formed. The principle of collective responsibility by itself would not mean that the Chief Minister cannot aid and advise the Government before appointment of the other Ministers. Collective responsibility means all Ministers share collective responsibility even for decisions in which they have taken no part whatsoever or in which they might have dissented at the meeting of the Council of Ministers. Collective responsibility means that members of Council of Ministers express a common opinion. It means unanimity and confidentiality. However, when there is a difference of opinion, it is the individual Minister who has to reign and not the Chief Minister or the Prime Minister because if the Chief Minister or the Prime Minister were to resign the other Ministers cannot exist any more.

##. In none of the decisions cited by the learned counsel for the petitioners, the Court had any occasion to deal with this particular controversy which is raised in the present group of petitions. Hence, the same are not required to be discussed.

##. In view of the above discussion, it is not possible to accept the contention urged on behalf of the petitioners that there was no Council of Ministers in existence when Shri Keshubhai Patel took oath of office of Chief Minister of Gujarat on March 4, 1998. Merely because there was substantial increase in the size of the Council from one to more, it cannot be said that the Council of Ministers came into existence for the first time on March 13, 1998.

The contention of Mr Raval that in view of Rule 5 of the Gujarat Government Rules of Business, 1990, the business was not allocated by the Governor till the allotment of portfolios upon swearing in of the other Ministers on March 13, 1998 cannot be accepted because the allocation of business amongst Ministers is to be done by the Governor at the advice of the Chief Minister and accordingly so long as the Council of Ministers comprises only of the Chief Minister and there are no other Ministers, the sole repository of the power is the Chief Minister and, therefore, it is open to the Chief Minister to exercise all the powers of giving aid and advice to the Governor. It is only when the Chief Minister chooses to share the powers with other Ministers that under his advice the Governor allocates the business to other Ministers. It, therefore, follows that until the appointment of other Ministers and until the

allocation of business by Governor at the advice of the Chief Minister, the power and duty to aid and advise the Governor under Article 163(1) remains with the Chief Minister.

##. For the sake of argument, even if two views are possible on the contention raised on behalf of the petitioners, and even if the view canvassed by the learned counsel for the petitioners is a better view, no useful purpose would be served by accepting these petitions when now there is admittedly a Council of Ministers in existance headed by the same Chief Minister and the Government headed by the same Chief Minister has contested these proceedings. As per the settled legal position, the Court does not issue futile writs.

CONTENTION II

##. As far as the second contention urged by the learned Counsel for the petitioners is concerned, it is necessary to reproduce the language of the order impugned in Special Civil Application No. 1708/98 as an illustration. The same reads as under :-

> "In exercise of the powers conferred by sub-section (1)(d) of section 4 of the Gujarat Industrial Development Act, 1962, Government is pleased to nominate Shri C.K. Koshi, Additional Chief Secretary, Industries and Mines Department, as Director on the Board of Directors of Gujarat Industrial Development Corporation in place of Shri Dattaji Chirandas with immediate effect.
>
> 2. In exercise of the powers conferred by sub-section 2 of section 4 of Gujarat Industrial Development Act, 1962, Government is pleased to appoint Shri C.K. Koshi, Additional Chief Secretary, Industries and Mines Department as Chairman of the Gujarat Industrial Development Corporation with immediate effect in place of Shri Dattaji Chirandas.
>
> The appointment will remain in force until further orders."

It is contended on the basis of the language of the order that the new incumbent is appointed to the office of the Chairman of the Gujarat Industrial Development Corporation, but the new incumbent can assume the office only after the previous incumbent is removed from the office and that until there is an express order

of removal from the office, the appointment of a new incumbent cannot be recognized.

##. The learned Additional Advocate General has pointed out in reply that since the Chairmen/Chairpersons of various statutory boards/corporations and Government companies are high dignitaries and some of these offices are equivalent to the offices of Ministers or even equivalent to Cabinet Ministers, the Government while replacing them by new incumbents, does not use the word "removal". It is further pointed out that even when the petitioner himself (Shri Dattaji Chirandas) assumed the office, that was pursuant to the order dated 3.5.1997 and the Government had not passed any order of removal of the previous incumbent. The said assertion is not denied. It is, therefore, necessary to consider the language of the order dated 3.5.1997 appointing the petitioner as the Chairman of the GIDC :-

"In exercise of the powers conferred by sub-section (1)(d) of section 4 of the Gujarat Industrial Development Act, 1962, Government is pleased to nominate Shri Dattaji Chirandas as Director on the Board of Directors of Gujarat Industrial Development Corporation in place of Shri C.R. Patil.

2. In exercise of the powers conferred by sub-section 2 of Section 4 of Gujarat Industrial Development Act, 1962, Government is pleased to appoint Shri Dattaji Chirandas as Chairman of the Gujarat Industrial Development Corporation with immediate effect in place of Shri C.R. Patil. This appointment will remain in force until further order."

##. Having considered the rival submissions, it clearly appears that since the Chairmen/Chairpersons of the statutory Boards/Corporations and Government Companies are not employees, the Government does not pass an order of removal for terminating their tenure since the occupants are holders of high offices equivalent to the rank of Ministers or even Cabinet Ministers.

No fault can, therefore, be found with the impugned order on the ground that there is no order removing the petitioner from the office. It will also not be out of place to mention at this stage that the petitioner had not hesitated in taking over the office of

the Chairman, GIDC and similar offices in case of other petitioners, when the petitioners were initially appointed as Chairmen/Chairpersons, on the specious plea that there was no order removing the previous incumbent.

##. In the case of Rejendra Singh vs. The State of Madhya Pradesh & Ors., JT 1996 (7) S.C. 216, the Apex Court has observed that the function of the Court under Article 226 or in a suit is not mechanical one. It is always a considered course of action. In the context of the various orders of appointment - passed in favour of the petitioners pursuant to which the petitioners assumed office and the impugned orders pursuant to which the petitioners have been replaced by other persons the Court has no hesitation in holding that there is no substance in the contention of the petitioners that absence of an express order of removal takes away the power of the Government to appoint other incumbents to replace the petitioners.

CONTENTION III

##. That brings us to the third contention which has been pressed into service with a lot of vehemence by the learned counsel for the petitioners in all the Special Civil Applications except Special Civil Application Nos. 1722, 1724 and 1727 of 1998 as in case of these three petitioners there was no order appointing them for a fixed term. In their case also, it was faintly urged that in Special Civil Application Nos. 1722 and 1724 of 1998, the statute provides for a tenure of two years to the Chairman and Directors of the Gujarat State Scheduled Caste Development Corporation and Gandhidham Development Authority respectively and, therefore, notwithstanding the absence of any term in the order of appointment, the petitioners are entitled to hold office for two years from the date of appointment. That argument need not detain us for the simple reason that the term provided for under the relevant provisions of the statute is for the maximum period and not for the minimum period.

##. We may, therefore, proceed with the contention of the petitioners in respect of the other petitions in Group A i.e. statutory Boards and Corporation where this argument is available. This argument is not certainly available in the second group of petitions wherein the offices involved are the offices of the Chairman/Chairperson of Government Companies or Societies since the Articles of Association of the Companies or Constitution of the Societies do not provide for any fixed tenure for such offices.

##. Special Civil Application No. 1708 of 1998 is concerned with the office of the Chairman of the GIDC. Section 3 of the Gujarat Industrial Development Act, 1962 (hereinafter referred to as "the Act of 1962" or "the GID Act") provides for establishment of the Corporation. Section 4 provides for Constitution of the Corporation as under :-

"4.(1) The Corporation shall consist of the following twelve Directors that is to say -

(a) There official Directors nominated by the State Government, of whom one shall be the Financial Adviser to the Corporation;

(b) one Director nominated by the State Electricity Board constituted under the Electricity (Supply) Act, 1948;

(c) one Director nominated by the Gujarat Housing Board constituted under the Gujarat Housing Board Act, 1948 ;

(d) six Directors nominated by the State Government from amongst persons appearing to it either to be qualified by reason of experience of, and capability in, industry or trade or finance or to be suitable to represent the interest of persons engaged or employed therein; and

(e) the Managing Director of the Corporation, ex-officio, who shall also be the Secretary of the Corporation.

(2) The State Government shall appoint one of the Directors of the Corporation to be Chairman of the Corporation and may appoint one of the other Directors as Vice-Chairman."

Section 6 provides for the term of office which reads under :-

"6.(1) The Chairman, Vice-Chairman if any and Directors of the Corporation nominated under clauses (a) to (d) of sub-section (1) of section 4, shall hold office for a period upto the end of two years from the date of their nomination as Directors."

Section 8 provides for cessation of Directorship on the ground of the disqualifications mentioned in Section 5: "unsound mind" or if the Director tenders his resignation which is accepted by the State Government or absence without the Corporation's permission from three consecutive meetings of the Corporation or from all meeting of the Corporation for three consecutive months or conviction for an offence involving moral turpitude. Sub-section (2) of Section 8 also provides for suspending a Director from office. Section 9 provides that any vacancy of a Director of the Corporation shall be filled as early as practicable and in like manner as if the nomination were being made initially.

It is contended on behalf of the petitioner that Shri Dattaji Chirandas was initially appointed as Chairman of the Gujarat Industrial Development Corporation as per notification dated 3.5.1997 wherein his appointment as Chairman was until further orders, but subsequently by Resolution dated 14.8.1997, the petitioner's tenure as Chairman of the Gujarat Industrial Development Corporation was fixed for two years with effect from the date of appointment i.e. from 3.5.1997 and, therefore, the petitioner is entitled to hold the office of the Chairman of the Gujarat Industrial Development Corporation till 2.5.1999. But by the impugned notification dated 6.3.1998, the petitioner has been replaced by Shri C.K. Koshi.

##. It is submitted that when the statute has provided for the tenure of two years for the Chairman of the GIDC and the Government has in exercise of the said order appointed the petitioner as the Chairman of the Corporation for a period of two years, it is not open to the Government to remove the petitioner from the office of the Chairman of the GIDC or to replace him by any other incumbent since the respondents have admittedly not invoked their power under Section 8 of the Act under which a person can be removed on the grounds of undergoing some disqualification or some positive misconduct. It is vehemently urged that the defence of the respondents that the Government wants to appoint Chairmen/Chairpersons of the statutory Boards, Corporations and Government Companies in order to ensure effective implementation of the policies of the Government may at the most furnish a justification for replacing the old incumbents or a reply to the plea of mala fides, but even then the Government must act according to law and if the law provides for a fixed tenure and there is an order of appointment in exercise

of that power appointing the petitioner for a term which will expire on 2.5.1999, the Government has no power to remove the petitioner from the office of the Chairman of the GIDC.

##. In support of this contention, strong reliance is placed on the decision of this Court in the case of Harshadrai Shantilal Shah vs. State of Gujarat, 1996 (1) GLH 806. The provisions of Section 16(1) of the Saurashtra University Act, inter alia, provided that the Senate shall consist of 12 members to be nominated from amongst distinguished educationists, social workers, trade unions, women and such other of persons. Section 16(2) provided that the term of the office of the elected members and of the members referred to above shall be of five years. The Government had nominated the members to the Senate in exercise of the aforesaid powers and the petitioners, who were so nominated by the State Government as members of the Senate under the provisions of Section 16(1), challenged the order dated 11.7.1995 passed by the State Government cancelling their nominations alongwith the nominations of 10 other members and nominating 12 fresh members in their place. This Court held that the persons who were nominated on the Senate for a period of five years were entitled to continue till the expiry of their term. There a similar defence was raised and it was contended on behalf of the State Government that the purpose underlying nomination under the said provision was to provide a representation of the State Government in the sense of an agent of the State Government who had to look after the interest of the State Government. This Court did not accept the aforesaid contention and held that the nominees on the Senate were not expected to be agents of the State Government and the petition was accordingly allowed.

##. Strong reliance is also placed on the interim order dated 18.12.1996 passed by this Court in Special Civil Application No. 8010 of 1996 and cognate matters. It is contended that although the Division Bench did not grant interim relief in case of many of the petitioners in that group, the Division Bench did grant interim relief in favour of the petitioner in Special Civil Application No. 8482 of 1996 (para 9 of the order) as the Division bench found that the Gujarat Housing Board Act under which that appointment was made provided for a tenure of 3 years and the petitioner in that case was appointed for that tenure and the Division Bench did grant interim protection in favour of that petitioner with the result that he has continued to hold the office of the Chairman of the Gujarat Housing Board. Similarly reliance is placed on

the interim order dated 26.9.1995 passed by another Division Bench of this Court in Special Civil Application No. 6960 of 1995.

##. It is further submitted on behalf of the petitioners that reliance placed on behalf of the respondents on the decision of the Supreme Court in Om Narain Agarwal, AIR 1993 SC 1440 and on the decision of this Court in Harisinh Chavda, 32(1) GLR 667 is misconceived because the relevant statutes in the respective cases empowered the Government to curtail the period of appointment by expressly stating that the incumbent shall hold office at the please of the Governor or by expressly conferring the power to curtail the period of appointment.

##. On the other hand, it is contended on behalf of the respondents that the order dated 18.12.1996 passed by the Division bench may not be treated as a precedent because it was only an interim order. The aforesaid interim order was passed by the Division Bench in the context of the petitions challenging the validity of the appointment of the then Chief Minister (Shri Shankersinh Vaghela) and, therefore, since the appointment of the then Chief Minister itself was under a cloud, the Court had considered the question of interim relief. However, in the instant case, there is no challenge to the appointment of Shri Keshubhai Patel as the Chief Minister of Gujarat and, therefore, the interim order passed by the Division Bench in the aforesaid group cannot be treated as a precedent in any view of the matter.

It is further contended that the Gujarat Housing Board Rules, 1997 framed under the Gujarat Housing Board Act, 1961, particularly Rule 3 thereof specifically provides that the Chairman of the Board shall be entitled to a salary of Rs. 3,000/- per month or such honorarium not exceeding Rs. 1,000/per month as the State Government may, in each case specify. However, the Rules contemplate the appointment of the full time Chairman who shall be entitled to leave on full pay at the rate of one month's leave per year of service. Hence, the office of the Chairman of the Gujarat Housing Board is governed by the terms of employment which is not the case in case of the present petitioners as they are not employees of the respective Boards, Corporation or of the Government Companies, they are not holding any post by virtue of any contract of employment, whether statutory or otherwise. There is no relationship of Mater and Servant between the Government and the Chairmen/Chairpersons of these Corporations.

##. It is also submitted by the learned Additional Advocate General that section 4(1)(d) of the GID Act and similar provisions of the other enactments conferring power upon the State Government to appoint Directors/Chairmen empower the State Government to make such appointment by nomination. Since the appointment by nomination is at the pleasure of the Government, termination is also at the pleasure of the Government and Section 16 of the Bombay General Clauses Act will certainly apply. It is submitted that Section 4(2) of the GID Act empowers the State Government to appoint one of the Directors of the Corporation to be the Chairman of the Corporation. The Government has the power to appoint by nomination six Directors from amongst the persons appearing to the State Government either to be qualified by reason of experience of, and capability in, industry or trade of finance or to be suitable to represent the interest of persons engaged or employed therein. If the Government appoints Mr. X as a Director and, thereafter as Chairman of the GIDC, such appointment is not justiciable because the appointment is by nomination. Since the appointment by nomination is to be made on the basis of the pleasure doctrine, termination of such appointment or replacement of the incumbent by another incumbent is also be a part of the pleasure doctrine.

##. Strong reliance is placed on behalf of the respondents on the decision of the Supreme Court in Om Narain Agarwal, AIR 1993 SC 1440 and the decisions of this Court in Special Civil Application Nos. 7408/97 and 9402/97 rendered by learned brother Mr Justice J.M. Panchal and on the decision of the Delhi High Court in 1991 DLT 262 and AIR 1991 Delhi 59.

##. It is also strenuously urged in the alternative that since the petitioners' appointments were on political considerations and there is no relationship of Master and Servant between the Government and the petitioners, even if the Court were to come to a conclusion that the impugned orders are not in accordance with law, this Court may decline to grant any relief in favour of the petitioners as no prejudice is caused to the petitioners and that writ Courts do not grant relief to the petitioners who do not establish failure of justice even after establishing an illegality.

##. Having given anxious and thoughtful consideration to the rival contentions, it must be noted at the outset that the petitioners are not employees of the respondent - Government or of the respective Boards/Corporations and Government Companies. No educational qualifications are

prescibred, there is no bar of lower or upper age limit, there is no provision for superannuation. Chairmen of the respetive Boards/Corporations are holders of high public offices who are appointed by the State Government by nomination. Before proceeding with the discussion any further, a detailed reference is required to be made to the decision of the Apex Court in the case of Om Narian Agarwal vs. Nagar Palika, Shahjahanpur, AIR 1993 SC 1440. The Government had, in exercise of the powers conferred by Section 9 of the Municipalities Act, appointed by nomination Smt. Abida and Hazra Khatoon as members of Shahjahanpur Municipal Board on 19.4.1990. On 22.7.1991 Mohd. Iqbal was the President of the Board and Shri Om Narain Agarwal was the Vice-President of the Board. Some members of the Board on 22.7.1991 initiated no-confidence motion against Mohd. Iqbal before the District Magistrate in accordance with the procedure prescribed by the Act. 12.8.1991 was fixed by the District Magistrate as the date for considering the no-confidence motion. In the meantime, on 2.8.1991 the State Government issued notification cancelling the nominations of the aforesaid two women members and in their place nominated two others as women members of the Board. On 9.8.1991, Mohd. Iqbal filed a writ petition before the Allahabad High Court challenging the constitutional validity of the fourth proviso to Section 9 of the Act (providing that a member nominated under Section 9 shall hold office during the pleasure of the State Government, but not beyond the term of the Board) and also the aforesaid notification dated 2.8.1991. The High Court passed an interim order stating that outcome of the no-confidence proceedings shall be subject to the result of the writ petition but did not grant any stay of no-confidence proceedings. At the meeting held on 12.8.1991, 20 members of the Board voted in favour of the no-confidence motion out of the total strength of 37 members. The vacancy caused upon passing of the no-confidence motion in the office of the President was filled in by Vice-President Shri Om Narain who took charge of the office and continued to function as President thereafter. Mohd. Iqbal filed another writ petition challenging the no-confidence motion passed against him, but no interim stay was granted in favour of the petitioner. Smt Abida and Hazra Khatoon also challenged the notification dated 2.8.1991 terminating their appointment. Ultimately, the High Court allowed all the three writ petitions. By its common order dated 14.9.1992 the High Court held that the fourth proviso to Section 9 of the Act was arbitrary, unreasonable, unconstitutional and invalid and quashed the notification dated 2.8.1991 cancelling the nomination of Smt. Abida

and Hazra Khatoon. In appeal, the Supreme Court reversed the judgment of the High Court.

The Supreme Court allowed the appeal, inter alia, after making the following observations :-

"The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorized the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. it has not been argued from the side of the respondents that the Legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. it is done purely on political considerations.

....

We are also not impressed with the argument that there would be a constant fear of

> removal at the will of the State Government and is bound to demoralize the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionaries in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficeintly, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to be demoralized or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office."

##. In view of aforesaid clear pronouncement of law made by the Apex Court, it is clear that the pleasure doctrine and applicability there of in the matter of appointment and removal of persons nominated to high public offices cannot be said to arbitrary, unreasonable or unconstitutional in any manner. If such appointments are made initially by nomination on political considerations, there can be no justification in resisting termination of such appointments on political considerations. Such nominees appointed on political considerations do not have the will or authority of the people of the State unlike those elected by the people of the State.

##. It is true that in the aforesaid case before the Supreme Court the fourth proviso to Section 9 incorporated the pleasure doctrine in express terms and the learned counsel for the petitioners have, therefore, argued with vehemence that if the stuatue itself does not provide, in express terms, for pleasure doctrine in the matter of removal of chairman, the doctrine cannot be invoked at all. This Court does not accept the aforesaid contention and holds that a statute can provide for pleasure doctrine for removal of chairman and holders of such high offices by necessary implication, through the following indicia :-

(i) If the appointment to the office of Chairman or such other high offices in a public Corporation/Board is to be made by the State Government by nomination and the appointment is left to the subjective satisfaction of the Government, the Court

would be inclined to read the pleasure doctrine into the provisions of the statute not merely for the pure appointment, but also for the purpose of removal.

The principle underlying Section 16 of the Bombay General Clauses Act, 1904 and Section 16 of the General Clauses Act, 1897 in pari material would apply, and, therefore, the power to appoint would include the power to remove, unless a different intention appears in the statute.

(ii) If the statute provides for Governmental control by empowering the Government to give directions or instructions to the concerned Board/Corporation, that would be a strong indication that the holders of the office of Chairman and other high offices were intended to be agents of the Government and, therefore, they can be removed at the pleasure of the Government.

(iii) Absence of a minimum term of office in the statute justifies applicability of the pleasure doctrine in the matter of removal of Chairman and other high public offices. If the statute provides for a minimum term of office, that would militate against applicability of the pleasure doctrine in the matter of removal.

The Court will, therfore, have to apply the aforesaid tests for ascertaining the intention of the Legislature whether or not the statute incorporates the pleasure doctrine for removal of the holders of high offices like Chairmen, Vice-Chairmen and Directors. The rationale for referring to the aforesaid decision of the Apex Court at the outset was only to show that there need not be any judicial resistance to reading into a statute pleasure doctrine in the matter of removal from high offices like Chairmen, Directors, etc. once the first test indicates above is fulfilled. Thereafter the burden of proving that the doctrine would not apply in the facts of a given case would be on the petitioner.

##. As far as the first test is concerned, now it is beyond controversy that the appointment of Chairman, Vice-Chairman/Directors of statutory Corporations/Boards and Government Company is left to the subjective satisfaction of the Government. The expressions "by reason of experience of, and capability in, industry or trade or finance" or "wide administrative experience in a managerial capacity" are to be applied in the facts of an individual case as per the complete discretion of the Government. No guidelines or norms are laid down in such enactments for the purpose of furnishing necessary particulars to the Government as to who can be appointed as the Chairman of the Boards/Corporations and, therefore, it can safely be said that the appointment of the Chairman of the Boards/Corporations/Government Companies has been left to the realm of high Governmental discretion as observed by this Court in the case of Harisinh Chavda vs. Chimanbhai Patel, 1191 (1) GLR 667 In view of the aforesaid discussion, it has to be held that the appointment of Chairman/Vice-Chairman or Directors of such statutory Boards/Corporations and Government Companies is not justiciable as such appointments are to be made by nomination at the pleasure of the Government.

##. It is true that in the case of Harisinh Chavda (Supra), the proviso to Section 6(1) of the Gujarat Water Supply & Sewerage Board Act, 1978 did empower the Government to determine the term of the office of the Chairman earlier than the period of three years provided for in the main part of Section 6(1), but the Court did not rest its finding only on that ground, but quoted with approval the following observations made and the principles laid down by the Delhi High Court in the case of Smt. Amarjit Kaur v. Union of India 43 (1991) Delhi Law Times 262 :-

> "The discretion of the Government in appointment as well as removal is untrammeled. It is in public interest because it is part of the policy (and its implementation), laid down by the Government. It must be recognized that each political party which forms the Government comes into power with promises and assurances in regard to social political and economic welfare of the people. For example, a party in power at a given time may have its distinct policy and programme for upliftment of poor or representation and protection to women. The five year plans which are sponsored by the Government would reflect the areas of priority of social welfare, administered

by the Social Welfare Department of the Government themselves and through the agencies like the Social Welfare Board. The change in the social policy and programmes with the democratic change of the rulers are, thus, part of our social life. The policies and programmes and fluencies shifts with the change in the Government. Such a change must be presumed to be in public interest so along as the Government is in power. The change in the personnel in special positions such as Chair-person of the Central Social Welfare Board are, therefore, inevitable part of a change in the policy and programme. If a democratically elected Government, therefore, feels that for effective implementation of its policies and programmes a change in the personnel is necessary, it cannot be accused of mala fide or pursuing an act of vendetta."

"..... the appointment of a person as the Chair-person of the Central Social Welfare Board is neither an appointment nor an employment under the State. The Government has absolute discretion in the appointment and removal of such a person. There is no vested right in the Chair-person for continuing to hold the appointment for the entire period of three years. Although there is some element of public office the nature of appointment of a Chair-person is more akin to the contract of special service with special qualifications. In case of premature termination the only right which the Chair-person has is to claim compensation for the unexpired period.

Counsel for the petitioner, however submits that compensation is not an adequate relief as the removal effects the dignity of the petitioner and the status of high office. As a matter of fact, the counsel submits, that the petition has not been filed to secure any monetary gain. It is well-settled principle of law that for merely vindicating the dignity of a person or an office no legal remedy is available. In any case the extraordinary remedy of a writ petition cannot be invoked for indicating one's honour. Where it is within the absolute discretion of the Government to confer the alleged dignity or status, it is implied in the said discretion that so called dignity or status can also come to and end in the exercise of the

> said discretion. It is the Government which in its direction treated the petitioner as a prominent social worker of all India status and attributed adequate `administrative and organization abilities'. After all the petitioner has not objectively established that she possesses any such qualifications. The suitability for the appointment to the said office of the Chairman, Central Social Welfare Board is inseparably connected with the policy frame work of the Government. Every loss of office, whether high or low creates subjective feeling of loss of social position. Further the considerations of high administrative discretion and policy transcend personal emotions of loss of status of the petitioner."

##. For reading the pleasure doctrine in the matter of removal of Chairman, the Courts have rightly relied on the provisions of Section 16 of the Bombay General Clauses Act, which is in pari materia with Section 16 of the General Clauses Act, 1889 which is a central legilation. There is no reason why the principle underlying the General Clauses Act cannot be invoked for applying the pleasure doctrine in the matter of removal of Chairman if such a doctrine is applicable at the stage of appointment by nomination. Of course, the aforesaid provisions of the General Clauses Acts provide that the principle embodied therein is liable to be displaced if a different intention appears. That only shows that the burden of proving the contrary would be on the petitioner.

##.As far as the second test is concerned, i.e. where the statute provides for Government control for the funcitions of the Board/Corporation, it is necessary to make a reference to the decision of this Court in the case of Harshadrai Shantilal Shah vs. State of Gujarat (Supra). That was a case under the Saurashtra University Act where the Court clearly found that the nominees to the Senate were not agents of the State Government, but they were to represent the respective interest groups like educationists, social workers, trade unions backward communities, women and similar other classes. This Court held in terms that the idea underlying the provisions of the Act was clearly to see that the purity of the educational stream does not get vitiated and the autonomous education Bodies are left free to follow their course for attaining higher goals in the filed of education. In the said case, this Court also

distinguished the decision of this Court in the case of Harisinh Chavda (supra) on the ground that Section 68 of the Gujarat Water Supply and Sewerage Board Act, 1978 provided that in the performance of its duties and discharge of its functions, the Board is required to be guided by the directions on questions of policy as may be given to it, from time to time, by the State Government, and it was further observed that it is in that context that Chairman of such a Board which is required to follow the directives of the State Government is required to hold office only during the pleasure of the State Government. The absence of such a statutory provision in the Saurashtra University Act appears to have been held to be fatal to the case of the Government for invoking the applicability of the pleasure doctrine.

##. In the case at hand, Section 17 of the GID Act clearly confers on the State Government powers to give directions to the Corporation in the following express terms :-

"17. The State Government may from time to time issue to the Corporation such general of special directions of policy as it thinks necessary or expedient for the purposes of carrying out the purposes of this Act and the Corporation shall be bound to follow and act upon such directions."

Similarly Section 122 of the Gujarat Town Planning & Urban Development Act, 1976 confers power on the State Government to give directions and instructions to the Urban Development Authority/Area Development Authorities under the Act in the following express terms :-

"122.(1) Every appropriate authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any appropriate authority under this Act any dispute arises between the authority and the State Government, the decision of the State Government on such disputes shall be final."

##. Mr Vakharia has gone a step further in his

submissions and has contended that the defence of the respondents that the Chairmen appointed by the previous Government are required to be replaced by the present Government in order to achieve more effective implementation of the policies is not available to the Government in case of Special Civil Application Nos. 1815 and 1816 of 1998 where the petitioners were appointed as Chairman of the Ahmedabad Urban Development Authority and Surat Urban Development Authority respectively. Reference is made to the provisions of the Gujarat Town Planning and urban Development Act, 1976 for contending that the Act is a self contained code for preparation of Urban/Area Development Plans and Town Planning Schemes and, therefore, for the development plans which are already sanctioned, the Government is not required to evolve a new policy and the development plans prepared earlier before installation of the present Government can very well be continued under the Chairmen appointed by the previous Government as only the Chairman is not going to take the decision and the decision will be taken by the entire Urban Development Authority which consists of several officials appointed by the Government and the members of the local authorities nominated by the Government, Presidents of the District Panchayats functioning under the Urban Development Authority, Chief Engineer or Engineers working in the area and, therefore, the replacement of the Chairman alone will not make the difference. In these cases also, it is urged that the respective petitioners were appointed as Chairmen of Ahmedabad Urban Development Authority and Surat Urban Development Authority until further order on 17.1.1997 but they were appointed for three years with effect from 17.1.1997 as per the Government orders dated 7.10.1997 and therefore, their term will continue till 16.1.2000 in view of the provisions of Rule 3 of the Gujarat Town Planning and Urban Development (Term of Office and Conditions of Service of the Members of the Urban Development Authority) Rules, 1977 (hereinafter referred to as the T.P. Rules) which reads as under :-

"3. Term of Office and conditions of service of members of Urban Development Authority under sub-section (5) of section 22.(1) The Chairman of the Urban Development Authority shall hold office for a period of three years but he shall continue to hold office after the expiry of the period of three years until his successor is appointed :

Provided that the Chairman shall be eligible for reappointment as Chairman after the expire of term."

(2) to (4) xxx xxx xxx xxxxx

It is, therefore, submitted that the impugned orders passed on 6.3.1997 are illegal and in contravention to the statutory provisions of section 22 of the Act and Rule 3.

##. This Court is of the view that even in the matter of preparation/modification/implementation of the Urban Development Plans, Area Development Plans and Town Planning Schemes, policy decisions are required to be taken regarding reservation or dereservation of areas for agriculture, industry and public services and, therefore, perceptions in the matter of preparation and execution of such development plans and Town Planning Schemes are also bound to vary with different Governments. Therefore, it is not possible to accept the argument of Mr Vakharia that replacement of Chairman of an Urban Development Authority with the change in Government would not be reasonable or bono fide. Even if the Urban Development Authority consists of various other members other than the Chairman, it cannot be gainsaid that the Chairman of such statutory body is always supposed to play an important role in shaping the formulation as well as the execution of policies.

##. Having examined the scheme of the relevant Acts under which the respective Boards/Corporation are consituted, the Court is left with no doubt that the relevant statutes do empower the State Governemnt to give directions and instructions to the concerned Boards/Corporations for the purpose of efficient administration of the Government or for carrying out the purposes of the Act and the Boards/Corporations are required to carry out such directions or instructions. The language of such statutory provisions of course varies from statute. For instance, Sections 18 to 21 of the Gujarat Municipal Finance Board Act, 1979 confer such power by empowering the State Government to impose terms and conditions for making grants and subventions and for making advances to the Board and also to give directions after perusal of the report of the auditor.

Similarly, Section 22 of the Gujarat Backward Classes Development Corporation Act, 1985 empowers the State Government to exercise such control through the Advisory Committee to be constituted by the State Government.

Section 26 of the Bombay Khadi & Village Industries Act, 1960 requires the Board to be guided by such instructions on question of policy as may be given to it by the State Government and the decision of the State is made final in case of a dispute whether a question is or is not a question of policy.

Section 36 of the Gujarat Slum Areas (Improvement, Clearance and Redevelopment) Act, 1973 enjoins upon the Board to comply with such directions as the State Government may from time to time issue either generally or in regard to any particular matter.

Section 39 of the State Financial Corporations Act, 1950 provides that in the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government in consultation with and after obtaining the advice of the Development Bank and that if any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the Stage Government shall be final.

##. As far as third indicia is concerned, the provisions in a statute for a particular term of office for Chairmen and such other high dignitaries e.g. 2 years or 3 years is obviously the maximum term or the outer limit and, therefore, the provision of such term under the statute does not negative or militate against the applicability of the pleasure doctrine. Different considerations would arise if the statute provides for the minimum term of office and a person is appointed to hold such office. For instance, in Special Civil Application No. 6960 of 1995, where interim order dated 26.9.1995 was passed in favour of the petitioners, the relevant bye-law provided that "the term of such committee (first Managing Committee) shall be atleast of five years ......". Hence, reliance placed by the learned counsel for the petitioners on the aforesaid interim order does not help them at all. It is conceded on behalf of the petitioners that in none of the petitions before this Court, there is any statutory provision or any provision in the Articles of Association for the Government Companies providing for a minimum term for Chariman or Director.

##. Before concluding the discussion about the replacement of the petitioners from the office of Chairman of the concerned statutory Corporations/Boards, reference is required to be made to Special Civil Application No. 1709 of 1998 challenging the impugned order of removal of the petitioner from the office of the

Chairman of the Warehousing Corporation. In the affidavit in reply filed on behalf of the State Government, it is pointed out that under sub-section (2) of Section 20 of the Warehousing Corporation Act, 1962, the Chairman of the Board of Directors shall be appointed by the State Government with the previous approval of the Cenbtral Warehousing Corporation. However, the petitioner was appointed as Chairman of the Warehousing Corporation for a period of three years vide notification dated 9.12.1996 without previous approval of the Central Warehousing Corporation and the proposal sent by the State Government for approval of the petitioner's appointment was not accepted by the Central Warehousing Corporation vide its letter dated 20.1.1998. Hence, the said petition deserves to be dismissed without any further discussion.

##. In view of the above discussion, applying the principles evolved earlier, it is clear that in all the petitions, the tests for applicability of the pleasure doctrine in the matter of removal of the chairmen of the respective Boards/Corporations are satisfied. Hence, the pleasure doctrine is clearly applicable and, therefore, removal/replacement of the petitioners by the impugned notifications/orders is not liable to be interfered with.

##. As far as the petitions in Group B are concerned, Special Civil Application No. 1791 of 1998 is argued as a representative petition. The petitioner was appointed as Chairman of the Gujarat State Police Housing Corporation, which is a Government Company, vide letter dated 8.9.1995 (Annexure "B" to the petition). Thereafter, by letter dated 1.11.1996 (Annexure "C"), the then Government called upon the petitioner to tender resignation on the ground that the petitioner and others who were appointed by the previous Government to hold the offices of the Chairmen and Members of the Boards/Corporations and Government Companies were required to tender resignations. The petitioner accordingly did send his resignation on 15.11.1996 (Annexure "D") but thereafter the State Government granted permission to the petitioner to continue as Chairman of the Gujarat State Police Housing Corporation vide letter dated 22.11.1996 (Annexure "E"). In the affidavit in reply filed on behalf of the State Government, it is pointed out by relying on the letter dated 4.11.1996 (Annexure II-A to the reply affidavit) that the petitioner had discussed the matter with the then Chief Minister and that since the petitioner had joined the party to which the then Chief Minister belonged, the then Chief Minister had agreed to the

petitioner continuing as Chairman of the said Corporation and, therefore, the petitioner did not resign as Chairman of the said Corporation. The aforesaid pleadings more than substantiate the stand of the respondents that the appointment of the petitioners of Special Civil Application No. 1791/98 and all other petitions being disposed of by this judgment were made purely on political considerations.

In any view of the matter, Article 146 (c) of the Articles of the Gujarat Police Housing Finance Corporation Ltd. provides as under :-

"146.(c) Subject to the provisions of the Act and Articles 148, 149 and 150 and 175 the Chairman and other members of the Board of Directors shall be appointed by the Government. The Chairman and members so appointed shall cease to hold the office at any time at the directions of the Government."

The Articles of Association, therefore, do not fix any tenure for the office of the Chairman and the Directors and, therefore, the Government is given full discretion to terminate the appointment even before expiry of the term mentioned in the order of appointment. Similar are the provisions in the Articles of Association in case of the other Government Companies which fall in Group B as classified earlier in this judgment. Hence, there is no merit in any of the petitions in Group B either.

##. As far as the petitions in Group C are concerned, when this Court has found no merit in the any petitions in Group A or Group B where the petitioners were appointed for a fixed term, there cannot be any merit in any of the petitions in Group C where the petitioners were admittedly not appointed for any fixed term. Hence, the said petitions also deserve to be dismissed.

##. In view of the above discussion, it must be held that there is no merit in any of the contentions raised by the petitioners. The petitions deserve to be dismissed. Even if there be any merit, in exercise of the discretionary jurisdiction of this Court under Article 226 of the Constitution, no relief deserves to be granted in favour of the petitioners in view of the following two aspects :-

(i) The petitioners were appointed as Chairmen of the

respective Boards/Corporation by the previous Government belonging to a different political party. The present Government belongs to another party. If the petitioners are continued as Chairmen, they may be on logger-heads with the present Government resulting into discord between the Government and the Boards/Corporations and, therefore, there cannot be effective and smooth implementation of the Government policies and programmes.

(ii) The Apex Court has made the following observations in the case of State of U.P. & Ors. vs. U.P. State Law Officers Assn. & ors., JT 1994 (1) SC 225 which was a case relating to appointment of Chief Standing Counsel and other Government Advocates, where the method of appointment was different from that in the case of Smt. Sreelekha Vidyarthi :-

"The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure, can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulated that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them."

##. In view of the aforesaid discussion, the petitions are dismissed. In each petition notice is discharged with no order as to costs.

April 7, 1998 (M.S. Shah, J.)